

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

☞ Appendix A ... segment II

LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2011 LRB-2015/1 (For: Rep. Knilans)

has been copied/added to the drafting file for

2011 LRB-3161 (For: Rep. Knilans)

☞ Are These “Companion Bills” ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 10/12/2011 (Per: MPG)

☞ The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2011 - 2012 LEGISLATURE

2011 BILL



LRB-2015/P2
MPG&JK:jld:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in mon 9-26

due used 9-28

D-N

X

Regen

1 AN ACT *to repeal* 238.30 (2g); *to amend* 71.07 (2dy) (a), 71.07 (2dy) (c) 1., 71.28
2 (1dy) (a), 71.28 (1dy) (c) 1., 71.47 (1dy) (a), 71.47 (1dy) (c) 1., 76.637 (1), 76.637
3 (3), 238.301 (2) (title), (a) and (b), 238.303 (2), 238.304, 238.305 (1) and 238.306
4 (1) (a) and (2) (a), (b), (c), (d), (f) and (g); and *to create* 238.135, 238.301 (1) (cm),
5 238.301 (2m), 238.3025 and 238.303 (1) (c) 1., 2. and 3. of the statutes; **relating**
6 **to:** economic development tax credits for activities in Rock County and Racine
7 County. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

and local

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 SECTION 1. 71.07 (2dy) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
9 is amended to read:

1 71.07 (2dy) (a) *Definition.* In this subsection, "claimant" means a person who
2 files a claim under this subsection and is certified under s. 238.301 (2) or (2m) or s.
3 560.701 (2), 2009 stats., and authorized to claim tax benefits under s. 238.303 or s.
4 560.703, 2009 stats.

5 **SECTION 2.** 71.07 (2dy) (c) 1. of the statutes, as affected by 2011 Wisconsin Act
6 32, is amended to read:

7 71.07 (2dy) (c) 1. No credit may be allowed under this subsection unless the
8 claimant includes with the claimant's return a copy of the claimant's certification
9 under s. 238.301 (2) or (2m) or s. 560.701 (2), 2009 stats., and a copy of the claimant's
10 notice of eligibility to receive tax benefits under s. 238.303 (3) or s. 560.703 (3), 2009
11 stats.

12 **SECTION 3.** 71.28 (1dy) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
13 is amended to read:

14 71.28 (1dy) (a) *Definition.* In this subsection, "claimant" means a person who
15 files a claim under this subsection and is certified under s. 238.301 (2) or (2m) or s.
16 560.701 (2), 2009 stats., and authorized to claim tax benefits under s. 238.303 or s.
17 560.703, 2009 stats.

18 **SECTION 4.** 71.28 (1dy) (c) 1. of the statutes, as affected by 2011 Wisconsin Act
19 32, is amended to read:

20 71.28 (1dy) (c) 1. No credit may be allowed under this subsection unless the
21 claimant includes with the claimant's return a copy of the claimant's certification
22 under s. 238.301 (2) or (2m) or s. 560.701 (2), 2009 stats., and a copy of the claimant's
23 notice of eligibility to receive tax benefits under s. 238.303 (3) or s. 560.703 (3), 2009
24 stats.

1 **SECTION 5.** 71.47 (1dy) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 71.47 (1dy) (a) *Definition.* In this subsection, "claimant" means a person who
4 files a claim under this subsection and is certified under s. 238.301 (2) or (2m) or s.
5 560.701 (2), 2009 stats., and authorized to claim tax benefits under s. 238.303 or s.
6 560.703, 2009 stats.

7 **SECTION 6.** 71.47 (1dy) (c) 1. of the statutes, as affected by 2011 Wisconsin Act
8 32, is amended to read:

9 71.47 (1dy) (c) 1. No credit may be allowed under this subsection unless the
10 claimant includes with the claimant's return a copy of the claimant's certification
11 under s. 238.301 (2) or (2m) or s. 560.701 (2), 2009 stats., and a copy of the claimant's
12 notice of eligibility to receive tax benefits under s. 238.303 (3) or s. 560.703 (3), 2009
13 stats.

14 **SECTION 7.** 76.637 (1) of the statutes, as affected by 2011 Wisconsin Act 32, is
15 amended to read:

16 76.637 (1) **DEFINITION.** In this section, "claimant" means an insurer who files
17 a claim under this section and is certified under s. 238.301 (2) or (2m) or s. 560.701
18 (2), 2009 stats., and authorized to claim tax benefits under s. 238.303 or s. 560.703,
19 2009 stats.

20 **SECTION 8.** 76.637 (3) of the statutes, as affected by 2011 Wisconsin Act 32, is
21 amended to read:

22 76.637 (3) **LIMITATIONS.** No credit may be allowed under this section unless the
23 insurer includes with the insurer's annual return under s. 76.64 a copy of the
24 claimant's certification under s. 238.301 (2) or (2m) or s. 560.701 (2), 2009 stats., and

Insert 4-6 ✓

1 a copy of the claimant's notice of eligibility to receive tax benefits under s. 238.303
2 (3) or s. 560.703 (3), 2009 stats.

3 **SECTION 9.** 238.13~~5~~ of the statutes is created to read:

4 **238.13~~5~~ Transfer or sale of tax credits earned for economic**

5 **development in Rock County or Racine County.** (1) (a) A person who is

6 certified or otherwise authorized by the corporation to claim a tax credit may request

7 that the corporation determine whether the credit may be transferred or sold under

8 this section. The corporation shall notify the person of the corporation's

9 determination within 10 business days after the corporation receives the request.

10 (b) The corporation shall determine that a tax credit may be transferred or sold

11 under this section if the corporation finds that the activity under which [✓]the

12 corporation has certified the person ^{was certified} to receive the credit is substantially related to

13 economic development in Rock County or Racine County.

14 (2) A person may sell or otherwise transfer a tax credit to another person who

15 is subject to taxation under ch. 71 or subch. III of ch. 76 if the corporation determines

16 under sub. (1) (b) that the credit may be sold or transferred and if the person who is

17 certified to claim the credit notifies the department of revenue, with regard to taxes

18 imposed under ch. 71, or the commissioner of insurance, with regard to taxes

19 imposed under subch. III of ch. 76, and the corporation of the sale or transfer in the

20 manner prescribed by the corporation. A person may sell or transfer a particular

21 credit only once. The person to whom the credit is sold or transferred may claim the

22 credit against an amount that is no more than 75 percent of the person's tax [✓]liability

23 under ch. 71 or subch. III of ch. 76 and may carry forward the amount of any unused

24 credit as provided under the appropriate provision in ch. 71 or subch. III of ch. 76.

in a taxable year

***NOTE: Do you want the transfer or sale provision to extend to tax credits that were awarded by the former Department of Commerce, but that the tax payer has not yet claimed. If not, we should probably include an initial applicability provision to the effect that the new sale and transfer provision first applies to tax credits awarded by the Wisconsin Economic Development Corporation on the effective date of the bill. Please let us know how you would like to proceed. Thank you.

1 **SECTION 10.** 238.30 (2g) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is repealed.

3 **SECTION 11.** 238.301 (1) (cm) of the statutes is created to read:

4 238.301 (1) (cm) A statement whether the person is applying for certification
5 under sub. (2) or (2m).

6 **SECTION 12.** 238.301 (2) (title), (a) and (b) of the statutes, as affected by 2011
7 Wisconsin Act 32, are amended to read:

8 238.301 (2) (title) ~~CERTIFICATION~~ GENERAL CERTIFICATION. (a) The corporation
9 may certify under this subsection a person who submits an application under sub.
10 (1) if, after conducting an investigation, the corporation determines that the person
11 is conducting or intends to conduct at least one eligible activity under s. 238.302.

12 (b) The corporation shall provide a person certified under this section
13 subsection and the department of revenue with a copy of the certification.

14 **SECTION 13.** 238.301 (2m) of the statutes is created to read:

15 238.301 (2m) CERTIFICATION FOR BUSINESS ACTIVITIES IN ROCK COUNTY AND
16 RACINE COUNTY. (a) The corporation may certify a person under this subsection who
17 submits an application under sub. (1) if, after conducting an investigation, the
18 corporation determines that the person is conducting or intends to conduct at least
19 one eligible activity under s. 238.3025, that the person is not a business that employs
20 more than 100 employees and is primarily engaged in retail sales and that the
21 person meets at least one of the following conditions:

directly to consumers

excluding affiliates

***NOTE: Do you want to include affiliates when counting a retail business's employees for purposes of the big-box retail exclusion?

- 1 1. The person is headquartered in Rock County or Racine County.
- 2 2. The person intends to relocate its headquarters to Rock County or Racine
- 3 County.
- 4 3. The person intends to expand its operations in Rock County or Racine
- 5 County, and that expansion will result in an increase in the number of full-time
- 6 employees employed by the person in an amount equal to at least 10 percent of the
- 7 person's full-time workforce at the time of application.
- 8 4. The person intends to expand its operations in Rock County or Racine
- 9 County, and that expansion will result in the person making a capital investment in
- 10 property located in that county, the value of which is equal to at least 10 percent of
- 11 the person's gross revenue in the preceding taxable year attributable to the person's
- 12 business activities within this state.

✓ 13 (b) The corporation shall provide a person certified under this subsection and
14 the department of revenue with a copy of the certification.

15 SECTION 14. 238.3025 of the statutes is created to read:

16 238.3025 ✓ Eligible activities in Rock County or Racine County. A person
17 who conducts or proposes to conduct any of the following may be certified under s.
18 238.301 (2m):

19 (1) JOB CREATION PROJECT. A project that, in addition to any existing full-time
20 jobs provided by the person, involves the creation of, within 3 years after the person's
21 certification, and the maintaining of, for a period of at least 2 years after a job is
22 created under this subsection, full-time jobs that are located within Rock County or
23 Racine County.

capital ✓

1 (2) CAPITAL INVESTMENT PROJECT. A project that involves a significant
2 investment of capital, as defined by the corporation by rule under s. 238.306 (2) (b),
3 by the person in new equipment, machinery, real property, or depreciable personal
4 property located in Rock County or Racine County. A capital investment under this
5 subsection may not consist of expenditures for intellectual property, design,
6 engineering, or permits or other approvals. A project under this subsection may not
7 include a project that is undertaken by a person whose primary business activity
8 consists of retail sales, commercial development, recreation, entertainment, or the
9 provision of health care services directly to patients.

10 (3) EMPLOYEE TRAINING PROJECT. A project that involves the person's significant
11 investments in the training or reeducation of employees, as defined by the
12 corporation by rule under s. 238.306 (2) (c), who are located in Rock County or Racine
13 County, for the purpose of improving the productivity or competitiveness of the
14 business of the person within that county.

15 (4) PROJECT RELATED TO CORPORATE HEADQUARTERS. A project that results in the
16 location or retention of the person's corporate headquarters in Rock County or Racine
17 County.

18 SECTION 15. 238.303 (1) (c) 1., 2. and 3. of the statutes are created to read:

19 ~~238.303~~ (1) (c) 1. Except as provided in subd. 2., the total value of all tax credits
20 the corporation may authorize persons certified under s. 238.301 (2m) to claim under
21 subs. (2) and (3) may not exceed \$10,000,000, and the corporation may not enter into
22 a contract under s. 238.301 (3) with a person certified under s. 238.301 (2m) after 5
23 years after the effective date of this subdivision [LRB inserts date].

24 2. Subject to subd. 3., the corporation may continue to contract under s. 238.301
25 (3) with persons certified under s. 238.301 (2m) for up to 5 years after the expiration

1 of the 5-year period under subd. 1., and the corporation may authorize up to an
2 additional \$10,000,000 in tax credits to those persons under subs. (2) and (3), if the
3 corporation determines that a continuation under this subdivision will promote
4 significant economic development within Rock County or Racine County or both.

5 3. Before the corporation enters into a contract under subd. 2., the chief
6 executive officer of the corporation shall notify the joint committee on finance in
7 writing that the corporation intends, under subd. 2., to continue contracting with
8 persons certified under s. 238.301 (2m) and authorizing those persons to claim tax
9 credits under subs. (2) and (3). That notice shall state the reasons supporting the
10 corporation's determination that additional tax credits will promote significant
11 economic development within Rock County or Racine County or both. If, within 14
12 working days after the date of that notice, the cochairpersons of the committee do not
13 notify the corporation that the committee has scheduled a meeting to review the
14 proposed continuation of tax credits, the corporation may proceed, under subd. 2., to
15 contract under 238.301 (3) with persons certified under s. 238.301 (2m) and to
16 authorize those persons to claim tax credits under subs. (2) and (3). If, within 14
17 working days after the date of that notice, the cochairpersons of the committee notify
18 the corporation that the committee has scheduled a meeting to review the proposed
19 continuation of tax credits, the corporation may proceed under subd. 2. only upon
20 approval of the committee.

21 **SECTION 16.** 238.303 (2) of the statutes, as affected by 2011 Wisconsin Act 32,
22 is amended to read:

23 238.303 (2) **AUTHORITY TO CLAIM TAX BENEFITS.** The corporation may authorize
24 a person certified under s. 238.301 (2) or (2m) to claim tax benefits only after the
25 person has submitted a report to the corporation that documents to the satisfaction

1 of the corporation that the ~~person has complied with the~~ terms of the contract under

2 s. 238.301 (3) and the requirements of any applicable ~~rules~~ adopted under s. 238.306

3 (2) have been satisfied.

~~STRIKE~~

politics and procedures

4 SECTION 17. 238.304 of the statutes, as affected by 2011 Wisconsin Act 32, is
5 amended to read:

6 **238.304 Eligible activities in economically distressed areas and**
7 **benefiting members of targeted groups.** The corporation may authorize a
8 person certified under s. 238.301 (2) or (2m) to claim additional tax benefits under
9 s. 238.303 if, after conducting an investigation, the corporation determines any of the
10 following:

11 (1) The person conducts at least one eligible activity under s. 238.302 or
12 238.3025 in an area designated by the corporation as economically distressed. In
13 designating an area as economically distressed under this subsection, the
14 corporation shall follow the methodology established ~~by rule~~ under s. 238.306 (2) (e).

~~STRIKE~~

15 (2) The person conducts at least one eligible activity under s. 238.302 or
16 238.3025 that benefits, creates, retains, or significantly upgrades full-time jobs for,
17 that trains, or that reeducates, members of a targeted group.

18 SECTION 18. 238.305 (1) of the statutes, as affected by 2011 Wisconsin Act 32,
19 is amended to read:

20 238.305 (1) Supplies false or misleading information to obtain certification
21 under s. 238.301 (2) or (2m).

~~(+title)~~ (intro.)

22 SECTION 19. 238.306 (1) (a) and (2) (a), (b), (c), (d), (f) and (g) of the statutes,
23 as affected by 2011 Wisconsin Act 32, are amended to read:

24 238.306 (1) (a) Annually verify information submitted to the department of
25 revenue under ss. 71.07 (2dy), 71.28 (1dy), 71.47 (1dy), and 76.637 by persons

1 certified under s. 238.301 (2) or (2m) and eligible to receive tax benefits under s.
2 238.303.

3 (3) ✓ (2) (a) A schedule of hourly wage ranges to be paid, and health insurance
4 benefits to be provided, to an employee by a person certified under s. 238.301 (2) or
5 (2m) and the corresponding per employee tax benefit for which a person certified
6 under s. 238.301 (2) or (2m) may be eligible.

7 (b) A definition of "significant investment of capital" for purposes of s. ss.
8 238.302 (2) and 238.3025 (2), together with a corresponding schedule of tax benefits
9 for which a person who is certified under s. 238.301 (2) or (2m) and who conducts a
10 project described in s. 238.302 (2) or 238.3025 (2) may be eligible. The corporation
11 corporation shall include in the definition required under this paragraph a schedule
12 of investments that takes into consideration the size or nature of the business.

13 (c) A definition of "significant investments in the training or reeducation of
14 employees" for purposes of s. ss. 238.302 (3) and 238.3025 (3), together with a
15 corresponding schedule of tax benefits for which a person who is certified under s.
16 238.301 (2) or (2m) and who conducts a project under s. 238.302 (3) or 238.3025 (3)
17 may be eligible.

18 (d) A schedule of tax benefits for which a person who is certified under s.
19 238.301 (2) or (2m) and who conducts a project that will result in the location or
20 retention of a person's corporate headquarters in Wisconsin, or in Rock County or
21 Racine County if the person is certified under s. 238.301 (2m), may be eligible.

22 (f) A schedule of additional tax benefits for which a person who is certified
23 under s. 238.301 (2) or (2m) and who conducts an eligible activity described under
24 s. 238.304 may be eligible.

1 (g) Reporting requirements, minimum benchmarks, and outcomes expected of
2 a person certified under s. 238.301 (2) or (2m) before that person may receive tax
3 benefits under s. 238.303.

4 **SECTION 20. Initial applicability.**

5 (1) This act first applies to taxable years beginning on January 1, 2011.

6 (END)

LEGISLATIVE REFERENCE BUREAU

1

INSERT A

to claim tax credits against the person's income or franchise tax liability or against the person's liability for fees imposed on insurers, NO 4

This bill creates an economic development tax credit program for business activities conducted in Rock County or Racine County. The bill also authorizes the transfer or sale of a tax credit related to economic development in Rock or Racine County under certain circumstances.

* **Tax credits for economic development in Rock County or Racine County**

Under current law, the Wisconsin Economic Development Corporation (corporation) may certify a person for corporate income and franchise tax credits and other tax credits if the corporation determines that the person is or will conduct certain eligible business activities that will result in economic development in the state, including job creation. Also under current law, a person may qualify for additional tax credits if the eligible activity conducted by the person will benefit a particular group or economically distressed area that the state has targeted for economic development.

This bill creates a program under which the corporation may award corporate income and franchise tax credits and other tax credits to persons who conduct certain business activities in Rock or Racine County. The corporation may certify a person for tax credits under the bill if the corporation determines that the person is conducting or intends to conduct an eligible business activity, that the person's business is not primarily retail sales directly to consumers, and that the person meets at least one of the following requirements:

1. The person is headquartered in Rock or Racine County.
2. The person intends to relocate its headquarters to Rock or Racine County.
3. The person intends to expand its operations in Rock or Racine County, and that expansion will increase by at least 10 percent the number of full-time jobs the person maintains in that county.
4. The person intends to expand its operations in Rock or Racine County, and the person will make a significant capital investment in property as a result of that expansion.

The eligible activities for which the corporation may certify a person for tax credits under the bill include all of the following:

1. A project that involves the creation and retention, for at least two years, of full-time jobs in Rock or Racine County.
2. Subject to certain limitations, a project that involves a significant investment by the person in new equipment, machinery, real property, or depreciable personal property located in Rock or Racine County.
3. A project that involves significant investment in the training or reeducation of employees the person employs in Rock or Racine County, if that training or reeducation is for the purpose of improving the productivity or competitiveness of the person's business in that county.
4. A project that results in the location or retention of the person's corporate headquarters in Rock or Racine County.

Also under the bill, a person may qualify for additional tax credits if the eligible activity conducted by the person in Rock or Racine County will benefit a particular group or economically distressed area that the state has targeted for economic development.

* Under the program created in the bill, the corporation may award up to \$10,000,000 in tax credits over five years. However, if after reaching those limits, the corporation determines that an extension of the program will support economic development in Rock or Racine County, the corporation may continue the program for up to an additional five years and an additional \$10,000,000. Any such extension of the tax credit program is subject to passive review by the Joint Committee on Finance.

* **Portability of tax credits**

Under current law, a tax credit awarded by the corporation may normally only be claimed by the person certified by the corporation to claim that credit, and the credit may not be sold or transferred to another person.

* The bill authorizes the sale or transfer of a tax credit awarded by either the corporation or, beginning on January 1, 2011, by the former Department of Commerce (Commerce) if the corporation determines that the activity for which the person was awarded the tax credit is substantially related to economic development in Rock or Racine County. Under the bill, if a person sells or transfers a tax credit, the person must notify the corporation, the Department of Revenue, or, if appropriate, the Commissioner of Insurance of that sale or transfer. The person to whom a credit is sold or transferred may claim the credit against up to 75 percent of the person's tax liability in a taxable year, but the credit may be carried forward for up to 15 years until fully claimed.

Finally, the bill authorizes the corporation to waive or modify a requirement of a certification for a tax credit issued by the corporation or Commerce if a person who may sell or transfer the tax credit applies to the corporation for that waiver or modification and the corporation determines that the requested waiver or modification will support economic development in Rock or Racine County. If the corporation revokes a person's certification for a tax credit and that person has already sold or transferred the tax credit, that person, not the person to whom the credit was transferred, must repay the amount of the tax credit to the state.

1 END INSERT A

2 INSERT 4-6

3 ~~NO~~ or, beginning on January 1, 2011, by the department of commerce under ch.

4 ~~560, 2009 stats.,~~ ~~NO~~

5 END INSERT 4-6

6 INSERT 4-24



INSERT - 3 - 4-24

LRB-2015/1ins.
MPG:.....

1 (3) Notwithstanding s. 238.303 (2) or any other provision of this chapter or of
2 ch. 71 or 76, the corporation may modify or waive a requirement of a certification or
3 other authorization to claim a tax credit issued by the corporation or, beginning on
4 January 1, 2011, by the department of commerce under ch. 560, 2009 stats., if all of
5 the following conditions are met:

6 (a) The person subject to the requirement applies to the corporation for a
7 modification or waiver of that requirement in the manner prescribed by the
8 corporation.

9 (b) The corporation determines that the person intends to and may lawfully sell
10 or otherwise transfer the tax credit under this section.

11 (c) The corporation determines that the requested modification or waiver will
12 support economic development in Rock County or Racine County.


13 (4) (a) If the corporation revokes a person's certification or other authorization
14 to claim a tax credit issued by the corporation or, beginning on January 1, 2011, by
15 the department of commerce under ch. 560, 2009 stats., and at the time of revocation
16 that person has transferred or otherwise sold that credit under this section, that
17 person shall repay the credit amount to the corporation notwithstanding that
18 transfer or sale.

19 (b) The corporation shall pay any amounts it receives under par. (a) to the
20 secretary of administration for deposit in the general fund.

21 END INSERT 4-24

22 INSERT 6-14

23 (c) The corporation may adopt policies and procedures to implement this
24 section, including additional eligibility requirements for certification for tax
25 benefits.



1 SECTION 1. 238.302 (2) and (3) of the statutes, as affected by 2011 Wisconsin
2 Act 32, are amended to read:

3 238.302 (2) CAPITAL INVESTMENT PROJECT. A project that involves a significant
4 ~~capital investment of capital~~, as defined by the corporation ~~by rule~~ under s. 238.306
5 (2) (b), by the person in new equipment, machinery, real property, or depreciable
6 personal property.

7 (3) EMPLOYEE TRAINING PROJECT. A project that involves significant investments
8 in the training or reeducation of employees, as defined by the corporation ~~by rule~~
9 under s. 238.306 (2) (c), by the person for the purpose of improving the productivity
10 or competitiveness of the business of the person.

History: 2009 a. 2; 2011 a. 32 s. 3411; Stats. 2011 s. 238.302.

11 END INSERT 6-14

12 INSERT 10-2

13 (2) (title) RULES POLICIES AND PROCEDURES. (intro.) Establish by rule policies
14 and procedures all of the following:

15 END INSERT 10-2

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
11-2015/1dn
MPG:.....

date

JK

Representative [✓]Knilians:

Please review this draft carefully to ensure that it is consistent with your intent. [✓]

This draft incorporates the provision we discussed allowing the Wisconsin Economic Development Corporation (corporation) to modify or waive a condition of certification for tax benefits to facilitate a sale or transfer of that credit. Note that whether the corporation grants such a modification or waiver lies within the corporation's discretion, except that the corporation must determine that the modification or waiver being requested supports economic development in Rock or Racine County. Is that consistent with your intent?

Also, in this draft, I included changes that are technical in nature. In particular, where statutory provisions affected by this proposal reference rules or rulemaking by the Corporation, I have either deleted the reference or changed "rules" to "policies and procedures," and I included that change to a few additional provisions of ch. 238 in this draft to maintain with the specific provisions of this draft. The references to "rules" were carried over in Act 32 when many economic development programs from the former Department of Commerce were transferred to the Corporation. The Corporation is not an agency ^{and} does not promulgate rules, and the references to "rules" could create confusion concerning what the Corporation is required to do or the status of its "rules." Are these technical changes okay?

If you have any questions, please do not hesitate to contact me.

Thank you.

Michael P. Gallagher
Legislative Attorney
Phone: (608) 267-7511
E-mail: michael.gallagher@legis.wisconsin.gov

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Wisconsin

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*
Consistency

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

11-2015/1dn
MPG:jld:ph

September 28, 2011

Representative Knilans:

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If you have any questions, please do not hesitate to contact me.

Thank you.

Michael P. Gallagher
Legislative Attorney
Phone: (608) 267-7511
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Barman, Mike

From: Rep.Knilans
Sent: Wednesday, October 05, 2011 10:12 AM
To: LRB.Legal
Cc: Kelly, Scott
Subject: Draft Review: LRB 11-2015/1 Topic: Tax credit program for businesses in Rock County

Please Jacket LRB 11-2015/1 for the ASSEMBLY. And also release the Jacket to Sen. Wanggard's office as well.

Please let me know if you have questions.

Kristy Curry
Legislative Assistant
608-266-7503

10-05-2011
she is going to talk
to MPG about having
a companion drafted for
the Senate

gmb



INACTIVE

LR# Number: 11-2015/1
Introduction Number:
Comment: Cancel '11' FE Request ... Will Be Re-Drafted
Request Date: 10/5/2011 11:45:07 AM
Description: economic development tax credits for activities in Rock County and Racine County
Subject: Econ. Development - bus. dev.
 CONFIDENTIAL DRAFT/BILL and Assignments

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Agency	Estimate Type	State/Local	Assigned	Due	Extended	Stage	Submitted	Public Estimate	Retrieved
1 Department of Revenue	Original	State & Local	10/5/2011	10/11/2011		Preparer		NO	NO

Wisconsin Department of Administration 101 East Wilson Street Madison, WI 53702

10-10-2011



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2015/1
MPG&JK:jld:ph

2011 BILL

1 **AN ACT** *to repeal* 238.30 (2g); *to amend* 71.07 (2dy) (a), 71.07 (2dy) (c) 1., 71.28
2 (1dy) (a), 71.28 (1dy) (c) 1., 71.47 (1dy) (a), 71.47 (1dy) (c) 1., 76.637 (1), 76.637
3 (3), 238.301 (2) (title), (a) and (b), 238.302 (2) and (3), 238.303 (2), 238.304,
4 238.305 (1) and 238.306 (1) (a) and (2) (intro.), (a), (b), (c), (d), (f) and (g); and
5 **to create** 238.135, 238.301 (1) (cm), 238.301 (2m), 238.3025 and 238.303 (1) (c)
6 1., 2. and 3. of the statutes; **relating to:** economic development tax credits for
7 activities in Rock County and Racine County.

Analysis by the Legislative Reference Bureau

This bill creates an economic development tax credit program for business activities conducted in Rock County or Racine County. The bill also authorizes the transfer or sale of a tax credit related to economic development in Rock or Racine County under certain circumstances.

Tax credits for economic development in Rock County or Racine County

Under current law, the Wisconsin Economic Development Corporation (corporation) may certify a person to claim tax credits against the person's income or franchise tax liability or against the person's liability for fees imposed on insurers, if the corporation determines that the person is or will conduct certain eligible business activities that will result in economic development in the state, including job creation. Also under current law, a person may qualify for additional tax credits

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if the eligible activity conducted by the person will benefit a particular group or economically distressed area that the state has targeted for economic development.

This bill creates a program under which the corporation may award tax credits to persons who conduct certain business activities in Rock or Racine County. The corporation may certify a person for tax credits under the bill if the corporation determines that the person is conducting or intends to conduct an eligible business activity, that the person's business is not primarily retail sales directly to consumers, and that the person meets at least one of the following requirements:

1. The person is headquartered in Rock or Racine County.
2. The person intends to relocate its headquarters to Rock or Racine County.
3. The person intends to expand its operations in Rock or Racine County, and that expansion will increase by at least 10 percent the number of full-time jobs the person maintains in that county.
4. The person intends to expand its operations in Rock or Racine County, and the person will make a significant capital investment in property as a result of that expansion.

The eligible activities for which the corporation may certify a person for tax credits under the bill include all of the following:

1. A project that involves the creation and retention, for at least two years, of full-time jobs in Rock or Racine County.
2. Subject to certain limitations, a project that involves a significant investment by the person in new equipment, machinery, real property, or depreciable personal property located in Rock or Racine County.
3. A project that involves significant investment in the training or reeducation of employees the person employs in Rock or Racine County, if that training or reeducation is for the purpose of improving the productivity or competitiveness of the person's business in that county.
4. A project that results in the location or retention of the person's corporate headquarters in Rock or Racine County.

Also under the bill, a person may qualify for additional tax credits if the eligible activity conducted by the person in Rock or Racine County will benefit a particular group or economically distressed area that the state has targeted for economic development.

Under the program created in the bill, the corporation may award up to \$10,000,000 in tax credits over five years. However, if after reaching those limits the corporation determines that an extension of the program will support economic development in Rock or Racine County, the corporation may continue the program for up to an additional five years and an additional \$10,000,000. Any such extension of the tax credit program is subject to passive review by the Joint Committee on Finance.

Portability of tax credits

Under current law, a tax credit awarded by the corporation may normally only be claimed by the person certified by the corporation to claim that credit, and the credit may not be sold or transferred to another person.

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The bill authorizes the sale or transfer of a tax credit awarded by either the corporation or, beginning on January 1, 2011, by the former Department of Commerce (Commerce) if the corporation determines that the activity for which the person was awarded the tax credit is substantially related to economic development in Rock or Racine County. Under the bill, if a person sells or transfers a tax credit, the person must notify the corporation, the Department of Revenue, or, if appropriate, the commissioner of insurance of that sale or transfer. The person to whom a credit is sold or transferred may claim the credit against up to 75 percent of the person's tax liability in a taxable year, but the credit may be carried forward for up to 15 years until fully claimed.

Finally, the bill authorizes the corporation to waive or modify a requirement of a certification for a tax credit issued by the corporation or Commerce if a person who may sell or transfer the tax credit applies to the corporation for that waiver or modification and the corporation determines that the requested waiver or modification will support economic development in Rock or Racine County. If the corporation revokes a person's certification for a tax credit and that person has already sold or transferred the tax credit, that person, not the person to whom the credit was transferred, must repay the amount of the tax credit to the state.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.07 (2dy) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 71.07 (2dy) (a) *Definition.* In this subsection, "claimant" means a person who
4 files a claim under this subsection and is certified under s. 238.301 (2) or (2m) or s.
5 560.701 (2), 2009 stats., and authorized to claim tax benefits under s. 238.303 or s.
6 560.703, 2009 stats.

7 **SECTION 2.** 71.07 (2dy) (c) 1. of the statutes, as affected by 2011 Wisconsin Act
8 32, is amended to read:

9 71.07 (2dy) (c) 1. No credit may be allowed under this subsection unless the
10 claimant includes with the claimant's return a copy of the claimant's certification
11 under s. 238.301 (2) or (2m) or s. 560.701 (2), 2009 stats., and a copy of the claimant's

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1 notice of eligibility to receive tax benefits under s. 238.303 (3) or s. 560.703 (3), 2009
2 stats.

3 **SECTION 3.** 71.28 (1dy) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
4 is amended to read:

5 71.28 (1dy) (a) *Definition.* In this subsection, "claimant" means a person who
6 files a claim under this subsection and is certified under s. 238.301 (2) or (2m) or s.
7 560.701 (2), 2009 stats., and authorized to claim tax benefits under s. 238.303 or s.
8 560.703, 2009 stats.

9 **SECTION 4.** 71.28 (1dy) (c) 1. of the statutes, as affected by 2011 Wisconsin Act
10 32, is amended to read:

11 71.28 (1dy) (c) 1. No credit may be allowed under this subsection unless the
12 claimant includes with the claimant's return a copy of the claimant's certification
13 under s. 238.301 (2) or (2m) or s. 560.701 (2), 2009 stats., and a copy of the claimant's
14 notice of eligibility to receive tax benefits under s. 238.303 (3) or s. 560.703 (3), 2009
15 stats.

16 **SECTION 5.** 71.47 (1dy) (a) of the statutes, as affected by 2011 Wisconsin Act 32,
17 is amended to read:

18 71.47 (1dy) (a) *Definition.* In this subsection, "claimant" means a person who
19 files a claim under this subsection and is certified under s. 238.301 (2) or (2m) or s.
20 560.701 (2), 2009 stats., and authorized to claim tax benefits under s. 238.303 or s.
21 560.703, 2009 stats.

22 **SECTION 6.** 71.47 (1dy) (c) 1. of the statutes, as affected by 2011 Wisconsin Act
23 32, is amended to read:

24 71.47 (1dy) (c) 1. No credit may be allowed under this subsection unless the
25 claimant includes with the claimant's return a copy of the claimant's certification

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1 under s. 238.301 (2) or (2m) or s. 560.701 (2), 2009 stats., and a copy of the claimant's
2 notice of eligibility to receive tax benefits under s. 238.303 (3) or s. 560.703 (3), 2009
3 stats.

4 **SECTION 7.** 76.637 (1) of the statutes, as affected by 2011 Wisconsin Act 32, is
5 amended to read:

6 76.637 (1) DEFINITION. In this section, "claimant" means an insurer who files
7 a claim under this section and is certified under s. 238.301 (2) or (2m) or s. 560.701
8 (2), 2009 stats., and authorized to claim tax benefits under s. 238.303 or s. 560.703,
9 2009 stats.

10 **SECTION 8.** 76.637 (3) of the statutes, as affected by 2011 Wisconsin Act 32, is
11 amended to read:

12 76.637 (3) LIMITATIONS. No credit may be allowed under this section unless the
13 insurer includes with the insurer's annual return under s. 76.64 a copy of the
14 claimant's certification under s. 238.301 (2) or (2m) or s. 560.701 (2), 2009 stats., and
15 a copy of the claimant's notice of eligibility to receive tax benefits under s. 238.303
16 (3) or s. 560.703 (3), 2009 stats.

17 **SECTION 9.** 238.137 of the statutes is created to read:

18 **238.137 Transfer or sale of tax credits earned for economic**
19 **development in Rock County or Racine County.** (1) (a) A person who is
20 certified or otherwise authorized by the corporation or, beginning on January 1, 2011,
21 by the department of commerce under ch. 560, 2009 stats., to claim a tax credit may
22 request that the corporation determine whether the credit may be transferred or sold
23 under this section. The corporation shall notify the person of the corporation's
24 determination within 10 business days after the corporation receives the request.

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1 (b) The corporation shall determine that a tax credit may be transferred or sold
2 under this section if the corporation finds that the activity under which the person
3 was certified to receive the credit is substantially related to economic development
4 in Rock County or Racine County.

5 (2) A person may sell or otherwise transfer a tax credit to another person who
6 is subject to taxation under ch. 71 or subch. III of ch. 76 if the corporation determines
7 under sub. (1) (b) that the credit may be sold or transferred and if the person who is
8 certified to claim the credit notifies the department of revenue, with regard to taxes
9 imposed under ch. 71, or the commissioner of insurance, with regard to taxes
10 imposed under subch. III of ch. 76, and the corporation of the sale or transfer in the
11 manner prescribed by the corporation. A person may sell or transfer a particular
12 credit only once. The person to whom the credit is sold or transferred may claim the
13 credit against an amount that is no more than 75 percent of the person's tax liability
14 in a taxable year under ch. 71 or subch. III of ch. 76 and may carry forward the
15 amount of any unused credit as provided under the appropriate provision in ch. 71
16 or subch. III of ch. 76.

17 (3) Notwithstanding s. 238.303 (2) or any other provision of this chapter or of
18 ch. 71 or 76, the corporation may modify or waive a requirement of a certification or
19 other authorization to claim a tax credit issued by the corporation or, beginning on
20 January 1, 2011, by the department of commerce under ch. 560, 2009 stats., if all of
21 the following conditions are met:

22 (a) The person subject to the requirement applies to the corporation for a
23 modification or waiver of that requirement in the manner prescribed by the
24 corporation.

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1 (b) The corporation determines that the person intends to and may lawfully sell
2 or otherwise transfer the tax credit under this section.

3 (c) The corporation determines that the requested modification or waiver will
4 support economic development in Rock County or Racine County.

5 (4) (a) If the corporation revokes a person's certification or other authorization
6 to claim a tax credit issued by the corporation or, beginning on January 1, 2011, by
7 the department of commerce under ch. 560, 2009 stats., and at the time of revocation
8 that person has transferred or otherwise sold that credit under this section, that
9 person shall repay the credit amount to the corporation notwithstanding that
10 transfer or sale.

11 (b) The corporation shall pay any amounts it receives under par. (a) to the
12 secretary of administration for deposit in the general fund.

13 **SECTION 10.** 238.30 (2g) of the statutes, as affected by 2011 Wisconsin Act 32,
14 is repealed.

15 **SECTION 11.** 238.301 (1) (cm) of the statutes is created to read:

16 238.301 (1) (cm) A statement whether the person is applying for certification
17 under sub. (2) or (2m).

18 **SECTION 12.** 238.301 (2) (title), (a) and (b) of the statutes, as affected by 2011
19 Wisconsin Act 32, are amended to read:

20 238.301 (2) (title) ~~CERTIFICATION~~ GENERAL CERTIFICATION. (a) The corporation
21 may certify under this subsection a person who submits an application under sub.
22 (1) if, after conducting an investigation, the corporation determines that the person
23 is conducting or intends to conduct at least one eligible activity under s. 238.302.

24 (b) The corporation shall provide a person certified under this ~~section~~
25 subsection and the department of revenue with a copy of the certification.

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1 **SECTION 13.** 238.301 (2m) of the statutes is created to read:

2 **238.301 (2m) CERTIFICATION FOR BUSINESS ACTIVITIES IN ROCK COUNTY AND**
3 **RACINE COUNTY.** (a) The corporation may certify a person under this subsection who
4 submits an application under sub. (1) if, after conducting an investigation, the
5 corporation determines that the person is conducting or intends to conduct at least
6 one eligible activity under s. 238.3025, that the person is not a business, excluding
7 affiliates, that is primarily engaged in retail sales directly to consumers, and that the
8 person meets at least one of the following conditions:

- 9 1. The person is headquartered in Rock County or Racine County.
- 10 2. The person intends to relocate its headquarters to Rock County or Racine
11 County.
- 12 3. The person intends to expand its operations in Rock County or Racine
13 County, and that expansion will result in an increase in the number of full-time
14 employees employed by the person in an amount equal to at least 10 percent of the
15 person's full-time workforce at the time of application.
- 16 4. The person intends to expand its operations in Rock County or Racine
17 County, and that expansion will result in the person making a capital investment in
18 property located in that county, the value of which is equal to at least 10 percent of
19 the person's gross revenue in the preceding taxable year attributable to the person's
20 business activities within this state.

21 (b) The corporation shall provide a person certified under this subsection and
22 the department of revenue with a copy of the certification.

23 (c) The corporation may adopt policies and procedures to implement this
24 section, including additional eligibility requirements for certification for tax
25 benefits.

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1 **SECTION 14.** 238.302 (2) and (3) of the statutes, as affected by 2011 Wisconsin
2 Act 32, are amended to read:

3 238.302 (2) CAPITAL INVESTMENT PROJECT. A project that involves a significant
4 ~~capital investment of capital~~, as defined by the corporation ~~by rule~~ under s. 238.306
5 (2) (b), by the person in new equipment, machinery, real property, or depreciable
6 personal property.

7 (3) EMPLOYEE TRAINING PROJECT. A project that involves significant investments
8 in the training or reeducation of employees, as defined by the corporation ~~by rule~~
9 under s. 238.306 (2) (c), by the person for the purpose of improving the productivity
10 or competitiveness of the business of the person.

11 **SECTION 15.** 238.3025 of the statutes is created to read:

12 **238.3025 Eligible activities in Rock County or Racine County.** A person
13 who conducts or proposes to conduct any of the following may be certified under s.
14 238.301 (2m):

15 (1) JOB CREATION PROJECT. A project that, in addition to any existing full-time
16 jobs provided by the person, involves the creation of, within 3 years after the person's
17 certification, and the maintaining of, for a period of at least 2 years after a job is
18 created under this subsection, full-time jobs that are located within Rock County or
19 Racine County.

20 (2) CAPITAL INVESTMENT PROJECT. A project that involves a significant capital
21 investment, as defined by the corporation under s. 238.306 (2) (b), by the person in
22 new equipment, machinery, real property, or depreciable personal property located
23 in Rock County or Racine County. A capital investment under this subsection may
24 not consist of expenditures for intellectual property, design, engineering, or permits
25 or other approvals. A project under this subsection may not include a project that

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1 is undertaken by a person whose primary business activity consists of retail sales,
2 commercial development, recreation, entertainment, or the provision of health care
3 services directly to patients.

4 (3) EMPLOYEE TRAINING PROJECT. A project that involves the person's significant
5 investments in the training or reeducation of employees, as defined by the
6 corporation under s. 238.306 (2) (c), who are located in Rock County or Racine
7 County, for the purpose of improving the productivity or competitiveness of the
8 business of the person within that county.

9 (4) PROJECT RELATED TO CORPORATE HEADQUARTERS. A project that results in the
10 location or retention of the person's corporate headquarters in Rock County or Racine
11 County.

12 **SECTION 16.** 238.303 (1) (c) 1., 2. and 3. of the statutes are created to read:

13 238.303 (1) (c) 1. Except as provided in subd. 2., the total value of all tax credits
14 the corporation may authorize persons certified under s. 238.301 (2m) to claim under
15 subs. (2) and (3) may not exceed \$10,000,000, and the corporation may not enter into
16 a contract under s. 238.301 (3) with a person certified under s. 238.301 (2m) after 5
17 years after the effective date of this subdivision [LRB inserts date].

18 2. Subject to subd. 3., the corporation may continue to contract under s. 238.301
19 (3) with persons certified under s. 238.301 (2m) for up to 5 years after the expiration
20 of the 5-year period under subd. 1., and the corporation may authorize up to an
21 additional \$10,000,000 in tax credits to those persons under subs. (2) and (3), if the
22 corporation determines that a continuation under this subdivision will promote
23 significant economic development within Rock County or Racine County or both.

24 3. Before the corporation enters into a contract under subd. 2., the chief
25 executive officer of the corporation shall notify the joint committee on finance in

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1 writing that the corporation intends, under subd. 2., to continue contracting with
2 persons certified under s. 238.301 (2m) and authorizing those persons to claim tax
3 credits under subs. (2) and (3). That notice shall state the reasons supporting the
4 corporation's determination that additional tax credits will promote significant
5 economic development within Rock County or Racine County or both. If, within 14
6 working days after the date of that notice, the cochairpersons of the committee do not
7 notify the corporation that the committee has scheduled a meeting to review the
8 proposed continuation of tax credits, the corporation may proceed, under subd. 2., to
9 contract under 238.301 (3) with persons certified under s. 238.301 (2m) and to
10 authorize those persons to claim tax credits under subs. (2) and (3). If, within 14
11 working days after the date of that notice, the cochairpersons of the committee notify
12 the corporation that the committee has scheduled a meeting to review the proposed
13 continuation of tax credits, the corporation may proceed under subd. 2. only upon
14 approval of the committee.

15 **SECTION 17.** 238.303 (2) of the statutes, as affected by 2011 Wisconsin Act 32,
16 is amended to read:

17 238.303 (2) **AUTHORITY TO CLAIM TAX BENEFITS.** The corporation may authorize
18 a person certified under s. 238.301 (2) or (2m) to claim tax benefits only after the
19 person has submitted a report to the corporation that documents to the satisfaction
20 of the corporation that the ~~person has complied with the terms of the contract under~~
21 s. 238.301 (3) and the requirements of any applicable ~~rules~~ policies and procedures
22 adopted under s. 238.306 (2) have been satisfied.

23 **SECTION 18.** 238.304 of the statutes, as affected by 2011 Wisconsin Act 32, is
24 amended to read:

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1 **238.304 Eligible activities in economically distressed areas and**
2 **benefiting members of targeted groups.** The corporation may authorize a
3 person certified under s. 238.301 (2) or (2m) to claim additional tax benefits under
4 s. 238.303 if, after conducting an investigation, the corporation determines any of the
5 following:

6 (1) The person conducts at least one eligible activity under s. 238.302 or
7 238.3025 in an area designated by the corporation as economically distressed. In
8 designating an area as economically distressed under this subsection, the
9 corporation shall follow the methodology established ~~by rule~~ under s. 238.306 (2) (e).

10 (2) The person conducts at least one eligible activity under s. 238.302 or
11 238.3025 that benefits, creates, retains, or significantly upgrades full-time jobs for,
12 that trains, or that reeducates, members of a targeted group.

13 **SECTION 19.** 238.305 (1) of the statutes, as affected by 2011 Wisconsin Act 32,
14 is amended to read:

15 238.305 (1) Supplies false or misleading information to obtain certification
16 under s. 238.301 (2) or (2m).

17 **SECTION 20.** 238.306 (1) (a) and (2) (intro.), (a), (b), (c), (d), (f) and (g) of the
18 statutes, as affected by 2011 Wisconsin Act 32, are amended to read:

19 238.306 (1) (a) Annually verify information submitted to the department of
20 revenue under ss. 71.07 (2dy), 71.28 (1dy), 71.47 (1dy), and 76.637 by persons
21 certified under s. 238.301 (2) or (2m) and eligible to receive tax benefits under s.
22 238.303.

23 (2) ~~RULES~~ POLICIES AND PROCEDURES. (intro.) Establish by ~~rule~~ policies and
24 procedures all of the following:

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1 (a) A schedule of hourly wage ranges to be paid, and health insurance benefits
2 to be provided, to an employee by a person certified under s. 238.301 (2) or (2m) and
3 the corresponding per employee tax benefit for which a person certified under s.
4 238.301 (2) or (2m) may be eligible.

5 (b) A definition of "significant ~~capital~~ investment of ~~capital~~" for purposes of s.
6 ~~ss.~~ 238.302 (2) and 238.3025 (2), together with a corresponding schedule of tax
7 benefits for which a person who is certified under s. 238.301 (2) or (2m) and who
8 conducts a project described in s. 238.302 (2) or 238.3025 (2) may be eligible. The
9 corporation shall include in the definition required under this paragraph
10 a schedule of investments that takes into consideration the size or nature of the
11 business.

12 (c) A definition of "significant investments in the training or reeducation of
13 employees" for purposes of ~~s.~~ ~~ss.~~ 238.302 (3) and 238.3025 (3), together with a
14 corresponding schedule of tax benefits for which a person who is certified under s.
15 238.301 (2) or (2m) and who conducts a project under s. 238.302 (3) or 238.3025 (3)
16 may be eligible.

17 (d) A schedule of tax benefits for which a person who is certified under s.
18 238.301 (2) or (2m) and who conducts a project that will result in the location or
19 retention of a person's corporate headquarters in Wisconsin, or in Rock County or
20 Racine County if the person is certified under s. 238.301 (2m), may be eligible.

21 (f) A schedule of additional tax benefits for which a person who is certified
22 under s. 238.301 (2) or (2m) and who conducts an eligible activity described under
23 s. 238.304 may be eligible.

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(g) Reporting requirements, minimum benchmarks, and outcomes expected of a person certified under s. 238.301 (2) or (2m) before that person may receive tax benefits under s. 238.303.

4 SECTION 21. Initial applicability.

5 (1) This act first applies to taxable years beginning on January 1, 2011.

6 (END)